

Message Text

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ACTION AF-18

INFO OCT-01 EUR-25 ISO-00 NEA-10 A-01 SY-10 IO-14 CIAE-00

DODE-00 PM-07 H-03 INR-10 L-03 NSAE-00 NSC-10 PA-04

RSC-01 PRS-01 SPC-03 SS-20 USIA-15 ACDA-19 DRC-01

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P R 230905Z OCT 73

FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC PRIORITY 7264

INFO AMEMBASSY BRUSSELS

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E.O. 11652: N/A

TAGS: PINS SU

SUB: ATTORNEY GENERAL EXPLAINS PROCEDURES IN BSO CASE

REF: KHARTOUM 2318

1. SUMMARY. IN HOUR-LONG DISCUSSION OCT 22, ATTGEN MADE CLEAR TWO ACCOMPLICES RELEASED DUE LACK EVIDENCE DIRECTLY LINKING PAIR WITH MURDERS OR "ABETMENT" THEREOF. HE INDICATED "SUMMARY COMMITMENT" PROCEDURE AND SUBSEQUENT TRIAL WOULD OCCUR IN CASE REMAINING EIGHT, WHO HAVE MADE "JUDICIAL CONFESSIONS", AND COMMENTED "WE WANT TO SEE JUSTICE RUTHLESSLY DONE". END SUMMARY.

2. DURING COURTESY CALL ON ATTGEN ZAKI MUSTAFA OCT 22, AMBASSADOR ASKED RE DETAILS RECENT RELEASE TWO PALESTINIAN ACCESSORIES KHARTOUM MURDERS. AMBASSADOR STRESSED WE HAD NO DESIRE APPEAR BE INTERFERING IN SUDANESE JUDICIAL PROCESS; WE MERELY WISHED UNDERSTAND IT SO THAT SPECIFIC DEVELOPMENTS SUCH AS RELEASE ACCOMPLICES COULD BE SET IN PROPER PERSPECTIVE. MUSTAFA SAID HE UNDERSTOOD BASIS OUR INTEREST AND PROVIDED BACKGROUND IN SUBSEQUENT PARAGRAPHS
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(MUSTAFA SHOULD NOT RPT NOT BE CITED AS SOURCE).

3. UNDER SUDANESE JUDICIAL PROCEDURES, WHEN PERPETRATORS AND OFFENSE APPREHENDED, "CASE DIARY" IS OPEN BY POLICE

FOR EACH INDIVIDUAL AND STATEMENTS TAKEN. IF PRIMA FACIE CASE APPEARS EXIST (AS IN PRESENT CASE), THOSE ARRESTED ARE ASKED TO MAKE "JUDICIAL CONFESSIONS". THESE STATEMENTS ARE TAKEN BEFORE MAGISTRATE, REGISTERED BY HIM, REGARDED AS CONCLUSIVE EVIDENCE AND RETRACTED WITH DIFFICULTY. WHEREAS THE EIGHT MAIN DEFENDENTS GAVE SUCH "JUDICIAL CONFESSIONS", THE TWO ACCOMPLICES DID NOT. MOREOVER, DURING INCARCERATION, EIGHT TREATED PAIR AS "INTRUDERS" OBVIOUSLY IN DIFFERENT CATEGORY, SAID MUSTAFA, FROM THOSE WHO "BROKE INTO SAUDI EMBASSY, HELD HOSTAGES AND SHOT THEM". IN MAJOR CASE LIKE THIS ONE, PROSECUTOR GENERAL'S STAFF IS BROUGHT IN EARLY TO STUDY EVIDENCE, INCLUDING STATEMENTS ACCUSED AND WITNESSES, AND EVALUATE CHARGES. POLICE HAD CITED ALL TEN ACCUSED UNDER ARTICLES 251 AND 84 OF PENAL CODE (I.E., MURDER AND "ABETMENT" TO MURDER) WHICH ARE NON-BAILABLE OFFENSES.

4. DEFENSE COUNSEL, FATAH AND ARAB LAWYERS BROUGHT PRESSURE TO BEAR ON PROSECUTOR GENERAL AND STAFF TO RELEASE ACCOMPLICES ON GROUND THEIR CONTINUED DETENTION UNJUSTIFIED. PRESSURING ELEMENTS WERE TOLD ATTGEN'S OFFICE (IN WHICH PROSECUTOR GENERAL WORKS) WAS EXAMINING CASE AND WOULD MAKE ITS OWN DECISION IN ITS OWN TIME. PRESSURE APPARENTLY RENEWED JUST PRIOR INCEPTION MAGISTERIAL INQUIRY SEPT 25, WITH DEFENSE COUNSEL REFUSING TO GO ALONG WITH "SUMMARY COMMITAL" PROCEDURE (SEE BELOW) FAVORED BY PROSECUTION UNLESS TWO RELEASED. HOWEVER, SUDANESE DID NOT YIELD TO PRESSURE AS "WE WANT TO SEE JUSTICE RUTHLESSLY DONE".

5. AS RESULT THOROUGH REVIEW FACTS IN CASE, INVOLVING PROSECUTOR GENERAL, DEPUTY ATTGEN AND ATTGEN, IT WAS DECIDED NO CASE COULD BE MADE AGAINST FATAH OFFICE RADIO OPERATOR. HE MERELY TRANSMITTED ONE CODED MESSAGE AND ACCOMPANIED FATAH OFFICIAL BEIRUT AND RETURN. WHEREAS CHARGE OF "CONCEALMENT" OF FACTS MIGHT HAVE BEEN TENABLE IF OFFENSE HAD BEEN EARLIER COMMITTED, CONCEALMENT CANNOT LIMITED OFFICIAL USE
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BE CHARGED UNDER SUDANESE LAW IN CASE OF SUBSEQUENT OFFENSE. ACCORDINGLY, ON BASIS INDIVIDUAL INNOCENT UNTIL PROVEN GUILTY, NO CASE EXISTED AGAINST RADIOMAN. AS TO "TRANSPORTATION OFFICER", NEITHER STATEMENTS OR OTHER EVIDENCE DEEMED SUFFICIENT TO SATISFY ATT GEN'S OFFICE THAT HE SHOULD BE TRIED, "LEAST OF ALL FOR MURDER". THERE IS EVIDENCE MAN SAW WEAPONS IN POSSESSION OTHER EIGHT SHORTLY BEFORE TRIP TO SAUDI EMBASSY, BUT WHEN HE ASKED ABOUT THEM, HE WAS REPORTEDLY TOLD SHUT UP AND MIND HIS OWN BUSINESS. HE WAS NOT TOLD TO DRIVE TO SAUDI EMBASSY BUT MERELY GIVEN DIRECTIONS STREET BY STREET. HAVING DROPPED EIGHT TERRORISTS AT SAUDI EMBASSY, MAN

DROVE AWAY SO AGITATED HE HIT PARKED CAR NEARBY. CASE AGAINST HIM APPEARED TOO FLIMSY TO WARRANT PROSECUTION.

6. AFTER DUE DELIBERATION, ATTGEN'S OFFICE DECIDED RECOMMEND TO MAGISTRATE THAT TWO BE RELEASED. MAGISTERIAL INQUIRY WAS ACCORDINGLY CONVENED (PROBABLY OCT 16) IN SPECIAL SESSION LIMITED THIS PURPOSE. MAGISTRATE HEARD PROSECUTOR'S RECOMMENDATION, DEFENSE CONCURRENCE AND, AFTER CONSIDERATION, RULED MEN COULD GO FREE.

7. AS TO "SUMMARY COMMITTAL" VS. "NON-SUMMARY COMMITTAL" PROCEDURE (KHARTOUM 2179), LATTER WOULD INVOLVE FULL HEARING WITNESSES, CROSS-EXAMINATION, ETC., AT MAGISTERIAL INQUIRY STAGE. ATT GEN'S OFFICE WISHED AVOID THIS IN ORDER OBTAIN EMOTIONAL "POLITICAL SPEECHES" BY ACCUSED AT THAT STAGE WHICH WILL NO DOUBT BE MADE DURING TRIAL PROPER. MOREOVER, SUMMARY COMMITTAL PROCEDURE IS USUAL WHEN ACCUSED CONFESS "AS IN THIS CASE" AND NEED IS SIMPLY TO ESTABLISH THE FACTS. THEN NO DETAILED EVIDENCE IS HEARD AND DEFENSE COUNSEL USUALLY RESERVES ARGUMENT FOR TRIAL PROPER, ALTHOUGH ACCUSED CAN ADD IF THEY WISH TO THEIR "JUDICIAL CONFESSIONS". WHILE DEFENSE COUNSEL MUST AGREE TO SUMMARY COMMITTAL PROCEDURE, ATTGEN'S OFFICE REFUSED BARGAIN WITH THEM OVER RELEASE ACCOMPLICES. HOWEVER, WHEN IT WAS DECIDED EVIDENCE AGAINST PAIR INSUFFICIENT (ABOVE, PARA FIVE), DEFENSE AGREED TO SUMMARY PROCEDURE WHICH WILL NOW BE EMPLOYED WHEN MAGISTERIAL INQUIRY RECONVENES.

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8. MAGISTERIAL INQUIRY ITSELF HAS IN PRINCIPAL THREE CHOICES: (I) FIND ACCUSED DID COMMIT OFFENSE FOR WHICH CHARGED AND REMAND THEM TO TRIAL BY "MAJOR COURT" (ONE SENIOR MAGISTRATE PLUS TWO JUNIOR MAGISTRATES); (II) FIND ACCUSED INNOCENT AND ACQUIT THEM; OR (III) FIND ACCUSED INNOCENT MORE SERIOUS CHARGE BUT GUILTY SOME LESSER OFFENSE AND REMAND THEM TO SIMPLE ONE-JUDGE MAGISTRATE'S COURT TO ANSWER THAT CHARGE OR CHARGES.

9. COMMENT: MUSTAFA'S EXPOSITION DETAILED AND FRIENDLY THROUGHOUT. HE INDICATED BY SMILE THERE MIGHT BE RELATIONSHIP BETWEEN DISCHARGE TWO ACCOMPLICES AND DEFENSE WILLINGNESS GO ALONG WITH SUMMARY PROCEDURE BUT INSISTED RELEASE PAIR RELEASED DETAILED EXAMINATION RECORD BY HIS OFFICE AND NOT "BLACKMAIL" BY ANYONE, WHICH HE CLAIMED WOULD HAVE BEEN RESISTED. SINCE PURPOSE AMBASSADOR'S CALL TECHNICALLY "COURTESY" IN NATURE TO ESTABLISH SOME RELATIONSHIP WITH ATTGEN AND INCREASE OUR UNDERSTANDING TREATMENT TWO ACCOMPLICES, AMBASSADOR DID NOT ASK WHETHER THERE ANY LEGAL WAY IN WHICH REMAINING EIGHT MIGHT AVOID

TRIAL. AT NO POINT IN HOUR-LONG DISCUSSION, HOWEVER, DID
ATTGEN GIVE ANY HINT SUGGESTING SUMMARY COMMITMENTAL PRO-
CEDURE AND SUBSEQUENT TRIAL COULD BE AVOIDED.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 11 MAY 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MURDER, PARAMILITARY FORCES, AMNESTY, COURTS, TRIALS
Control Number: n/a
Copy: SINGLE
Draft Date: 23 OCT 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973KHARTO02323
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: n/a
From: KHARTOUM
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731065/abqcefqi.tel
Line Count: 169
Locator: TEXT ON-LINE
Office: ACTION AF
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: KHARTOUM 2318
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 05 NOV 2001
Review Event:
Review Exemptions: n/a
Review History: WITHDRAWN <05-Nov-2001 by willialc, 3.4.X6>; RELEASED <05-Nov-2001 by garlanwa>; APPROVED <06-Nov-2001 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: PINS, SU, SA
To: STATE INFO BRUSSELS
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005